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PEGATRON USA, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOSHUA SMITH, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

PEGATRON USA, INC., a California  
corporation, ASROCK AMERICA, INC., a  
California corporation, and FATALITY, INC.,  
d/b/a Fatal1ty, Inc., a Missouri corporation,

Defendants.

Case No. 3:14-cv-01822-CRB

**ANSWER OF DEFENDANT  
PEGATRON USA, INC. TO FIRST  
AMENDED CLASS ACTION  
COMPLAINT**

1 Defendant Pegatron USA, Inc. ("Pegatron USA"), by and through its attorneys, hereby  
2 answers the First Amended Class Action Complaint of Plaintiff Joshua Smith ("Plaintiff" or  
3 "Smith") filed on July 3, 2014.

#### 4 **NATURE OF THE ACTION**

5 1. According to the FAC, the term "ASRock" refers to Defendant ASRock America,  
6 Inc., which, for purposes of this Answer, will be referred to as "ASRock America." Defendant  
7 Pegatron USA denies that Pegatron Corporation acquired defendant ASRock America, in 2010 or  
8 ever. As to the remaining allegations of this paragraph, Defendant Pegatron USA lacks knowledge  
9 or information sufficient to form a belief about the truth of these allegations and on such basis denies  
10 them.

11 2. Defendant Pegatron USA denies that it had any involvement in any aspect of the  
12 ASRock Fatal1ty motherboards at issue in this action, including the design, development,  
13 production, marketing, advertising or selling of them. Said defendant further denies that it  
14 developed any marketing materials for the ASRock Fatal1ty motherboards. Defendant Pegatron  
15 USA denies the allegations of this paragraph.

16 3. Denied.

17 4. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
18 about the truth of these allegations and on such basis denies them. Said Defendant further denies  
19 that plaintiff and/or the class he seeks to represent are entitled to any relief from this answering  
20 defendant.

#### 21 **PARTIES**

22 5. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
23 about the truth of these allegations and on such basis denies them.

24 6. Defendant Pegatron USA admits the first sentence of this paragraph; and, further  
25 admits that Pegatron USA is a subsidiary of non-party Pegatron Corporation. Except as so expressly  
26 admitted Defendant Pegatron USA denies the allegations of this paragraph.

27 7. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
28 about the truth of these allegations and on such basis denies them.

1           8. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
2 about the truth of these allegations and on such basis denies them.

3                                   **JURISDICTION AND VENUE**

4           9. Defendant Pegatron USA admits that Plaintiff is a citizen of a different state that the  
5 Defendants. Defendant Pegatron USA denies the remaining allegations of this paragraph.

6           10. Defendant Pegatron USA admits that it conducts business in California. Defendant  
7 Pegatron USA denies that "...the events giving rise to this lawsuit occurred, in substantial part, in  
8 California. As to the remaining allegations of this paragraph, Defendant Pegatron USA lacks  
9 knowledge or information sufficient to form a belief about the truth of these allegations and on such  
10 basis denies them.

11          11. Defendant Pegatron USA admits that it maintains its headquarters and principal place  
12 of business in this District. Except as so expressly admitted Defendant Pegatron USA denies the  
13 allegations of this paragraph.

14                                   **FACTUAL BACKGROUND**

15          12. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
16 about the truth of these allegations and on such basis denies them.

17          13. Denied.

18          14. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
19 about the truth of these allegations and on such basis denies them.

20          15. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
21 about the truth of these allegations and on such basis denies them.

22          16. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
23 about the truth of these allegations and on such basis denies them.

24          17. Denied.

25          18. Denied.

26          19. Defendant Pegatron USA denies that it is engaged any motherboard line of business  
27 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the  
28 design, development, production, marketing, advertising or selling of them. Said defendant further

1 denies that it was involved in developing or producing any presentations or advertising statements  
2 relating to the ASRock Fatal1ty motherboards. Said Defendant further denies the allegations of this  
3 paragraph.

4 20. Defendant Pegatron USA admits that the physical packaging of certain models of the  
5 ASRock Fatal1ty motherboards contained, at one time, the following statement, among others:

6 “Boosts Networking Performance 5X.”

7 “5X Networking Performance...feature Killer E2200 Intelligent  
8 Networking Platform, which boosts networking performance up to 5X  
9 for time-sensitive UDP (User Datagram Protocol) based applications,  
such as online games and high quality media streaming.”

10 Except as so expressly admitted Defendant Pegatron USA denies the allegations of this  
11 paragraph.

12 21. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
13 about the truth of these allegations and on such basis denies them.

14 22. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
15 about the truth of these allegations and on such basis denies them.

16 23. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
17 about the truth of these allegations and on such basis denies them.

18 24. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
19 about the truth of the allegations of the first sentence of this paragraph and on such basis denies  
20 them. This answering Defendant admits the allegations of the second sentence of this paragraph.  
21 This answering Defendant denies the allegations of the third sentence of this paragraph.

22 25. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
23 about the truth of these allegations and on such basis denies them.

24 26. Defendant Pegatron USA denies that it is engaged any motherboard line of business  
25 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the  
26 design, development, production, marketing, advertising or selling of them. Said defendant does not  
27 maintain a website and denies that it made any of the statements alleged on any website, and denies  
28 the allegations of this paragraph.

1           27. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
2 about the truth of these allegations and on such basis denies them.

3           28. Defendant Pegatron USA denies that it is engaged any motherboard line of business  
4 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the  
5 design, development, production, marketing, advertising or selling of them. Defendant Pegatron  
6 USA lacks knowledge or information sufficient to form a belief about the truth of these allegations  
7 and on such basis denies them.

8           29. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
9 about the truth of these allegations and on such basis denies them.

10          30. Defendant Pegatron USA denies that it is engaged any motherboard line of business  
11 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the  
12 design, development, production, marketing, advertising or selling of them. Said defendant does not  
13 maintain a website and denies that it made any of the statements alleged on any website, and denies  
14 the allegations of this paragraph.

15          31. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
16 about the truth of these allegations and on such basis denies them.

17          32. Defendant Pegatron USA denies that it is engaged any motherboard line of business  
18 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the  
19 design, development, production, marketing, advertising or selling of them. Said defendant further  
20 denies that it made any of the advertising statements which are the subject of the FAC and denies the  
21 allegations of this paragraph.

22          33. Defendant Pegatron USA denies that it is engaged any motherboard line of business  
23 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the  
24 design, development, production, marketing, advertising or selling of them. Said defendant does not  
25 maintain a website and denies that it made any of the statements alleged on any website, and denies  
26 the allegations of this paragraph.

27          34. Defendant Pegatron USA denies that it is engaged any motherboard line of business  
28 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the

1 design, development, production, marketing, advertising or selling of them. Defendant Pegatron  
2 USA lacks knowledge or information sufficient to form a belief about the truth of these allegations  
3 and on such basis denies them.

4 35. Defendant Pegatron USA denies that it is engaged any motherboard line of business  
5 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the  
6 design, development, production, marketing, advertising or selling of them. Defendant Pegatron  
7 USA lacks knowledge or information sufficient to form a belief about the truth of these allegations  
8 and on such basis denies them.

9 36. Denied.

10 37. Defendant Pegatron USA denies that it is engaged any motherboard line of business  
11 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the  
12 design, development, production, marketing, advertising or selling of them. Defendant Pegatron  
13 USA lacks knowledge or information sufficient to form a belief about the truth of these allegations  
14 and on such basis denies them.

15 38. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
16 about the truth of these allegations and on such basis denies them.

17 39. Denied.

18 40. Defendant Pegatron USA denies that it was involved in the creation of any user  
19 manual for any of the products at issue in the FAC and denies the allegations of this paragraph.

20 41. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
21 about the truth of these allegations and on such basis denies them.

22 42. Denied.

23 43. Defendant Pegatron USA denies that it is engaged any motherboard line of business  
24 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the  
25 design, development, production, marketing, advertising or selling of them. Defendant Pegatron  
26 USA lacks knowledge or information sufficient to form a belief about the truth of these allegations  
27 and on such basis denies them.

28 44. Denied.

1	45. Denied.
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2	46. Denied.
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3            47. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
4            about the truth of these allegations and on such basis denies them.

5	48. Denied.
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6           49. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
7   about the truth of these allegations and on such basis denies them.

8           50. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
9   about the truth of these allegations and on such basis denies them.

10           51. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
11 about the truth of these allegations and on such basis denies them.

12	52. Denied.
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13	53. Denied.
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14           54. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
15 about the truth of these allegations and on such basis denies them.

16	55. Denied.
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17 CLASS ALLEGATIONS

56. Defendant Pegatron USA denies that this action may properly proceed as a class  
action under the provisions of any applicable law. Responding further, Defendant Pegatron USA  
lacks knowledge or information sufficient to form a belief about the truth of these allegations and on  
such basis denies them.

22	57. Denied.
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23	58. Denied.
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24	59. Denied.
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25	60. Denied.
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26	61. Denied.
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27	62. Denied.
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28      63.      Defendant Pegatron USA lacks knowledge or information sufficient to form a belief

1 about the truth of these allegations and on such basis denies them.

2 **FIRST CAUSE OF ACTION**  
3 **Violation of Consumers Legal Remedies Act**  
4 **Cal. Civ. Code §§ 1750, *et seq.***  
5 **(On Behalf of Plaintiff and the Class)**

6 64. Defendant Pegatron USA hereby incorporates by reference its responses to the  
7 allegations in each of the preceding paragraphs as if set out in full herein.

8 65. Defendant Pegatron USA denies that it engaged in the actions and/or conduct alleged  
9 in the FAC and denies the allegations of this paragraph.

10 66. Admitted.

11 67. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
12 about the truth of these allegations and on such basis denies them.

13 68. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
14 about the truth of these allegations and on such basis denies them.

15 69. Denied.

16 70. Denied.

17 71. Denied.

18 72. Denied.

19 73. Denied.

20 74. Denied.

21 75. Denied.

22 76. Denied.

23 77. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
24 about the truth of these allegations and on such basis denies them.

25 78. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
26 about the truth of these allegations and on such basis denies them.

27 79. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
28 about the truth of these allegations and on such basis denies them.

80. Denied.



1           81. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
2 about the truth of these allegations and on such basis denies them.

3           82. Denied.

4           83. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
5 about the truth of the allegations in the first sentence of this paragraph and on such basis denies  
6 them. Said answering defendant admits the allegations in the second sentence of this paragraph.  
7 Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks  
8 to represent are entitled to any remedy against this answering defendant.

9                                   **SECOND CAUSE OF ACTION**  
10                                  **Violations of California's Unfair Competition Law**  
11                                  **Cal. Bus. & Prof. Code §§ 17200, *et seq.***  
                                      **(On Behalf of Plaintiff and the Class)**

12           84. Defendant Pegatron USA hereby incorporates by reference its responses to the  
13 allegations in each of the preceding paragraphs as if set out in full herein.

14           85. The allegations in this paragraph are conclusions of law and not allegations of fact.  
15 Defendant Pegatron USA admits that the courts and the California legislature have stated the  
16 purpose of the UCL and that all parties are bound by such expressions to the extent that the law so  
17 provides. Except as so expressly admitted, Defendant Pegatron USA lacks knowledge or  
18 information sufficient to form a belief about the truth of these allegations and on such basis denies  
19 them.

20           86. The allegations in this paragraph are conclusions of law and not allegations of fact.  
21 Defendant Pegatron USA admits that the express language of the UCL speaks for itself. Except as  
22 so expressly admitted, Pegatron USA lacks knowledge or information sufficient to form a belief  
23 about the truth of these allegations and on such basis denies them.

24           87. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
25 about the truth of these allegations and on such basis denies them.

26           88. Denied.

27           89. Denied.

28           90. Denied.

1           91. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
2 about the truth of these allegations and on such basis denies them.

3           92. Defendant Pegatron USA denies that it engaged in the acts alleged in the FAC, denies  
4 any conduct of these defendants was fraudulent or in any way improper and denies the allegations of  
5 this paragraph.

6           93. Denied.

7           94. Denied.

8           95. Defendant Pegatron USA denies that it engaged in the acts alleged in the FAC, denies  
9 any conduct of it was fraudulent or in any way improper and denies the allegations of this paragraph.  
10 As to the remaining allegations in this paragraph, Defendant Pegatron USA lacks knowledge or  
11 information sufficient to form a belief about the truth of these allegations and on such basis denies  
12 them.

13           96. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
14 about the truth of the allegations in this paragraph and on such basis denies them. Said answering  
15 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are  
16 entitled to any remedy against this answering defendant.

17                                   **THIRD CAUSE OF ACTION**  
18                                   **Violation of False Advertising Law**  
19                                   **Cal. Bus. & Prof. Code §§ 17500, *et seq.***  
                                     **(On Behalf of Plaintiff and the Class)**

20           97. Defendant Pegatron USA hereby incorporates by reference its responses to the  
21 allegations in each of the preceding paragraphs as if set out in full herein.

22           98. The allegations in this paragraph are conclusions of law and not allegations of fact.  
23 Defendant Pegatron USA admits that the express language of the FAC speaks for itself. Except as  
24 so expressly admitted, Pegatron USA lacks knowledge or information sufficient to form a belief  
25 about the truth of these allegations and on such basis denies them.

26           99. Denied.

27           100. Denied.

28           101. Denied.

1           102.   Denied.

2           103.   Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
3 about the truth of the allegations in this paragraph and on such basis denies them. Said answering  
4 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are  
5 entitled to any remedy against this answering defendant.

6                                   **FOURTH CAUSE OF ACTION**  
7                                   **Fraud in the Inducement**  
8                                   **(On Behalf of Plaintiff and the Class)**

9           104.   Defendant Pegatron USA hereby incorporates by reference its responses to the  
10 allegations in each of the preceding paragraphs as if set out in full herein.

11           105.   Denied.

12           106.   Denied.

13           107.   Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
14 about the truth of these allegations and on such basis denies them.

15           108.   Denied.

16           109.   Denied.

17           110.   Denied.

18           111.   Denied.

19           112.   Denied.

20           113.   Denied.

21           114.   Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
22 about the truth of the allegations in this paragraph and on such basis denies them. Said answering  
23 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are  
24 entitled to any remedy against this answering defendant.

25                                   **FIFTH CAUSE OF ACTION**  
26                                   **Breach of Express Warranties**  
27                                   **(On Behalf of Plaintiff and the Class)**

28           115.   Defendant Pegatron USA hereby incorporates by reference its responses to the  
29 allegations in each of the preceding paragraphs as if set out in full herein.

30           116.   Defendant Pegatron USA denies that it made any of the advertising statements at

1 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
2 owned any website referred to in the FAC, and further denies it made any statement referred to in the  
3 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
4 of this paragraph.

5 117. Defendant Pegatron USA denies that it made any of the advertising statements at  
6 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
7 owned any website referred to in the FAC, and further denies it made any statement referred to in the  
8 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
9 of this paragraph.

10 118. Defendant Pegatron USA denies that it made any of the advertising statements at  
11 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
12 owned any website referred to in the FAC, and further denies it made any statement referred to in the  
13 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
14 of this paragraph.

15 119. Defendant Pegatron USA denies that it made any of the advertising statements at  
16 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
17 owned any website referred to in the FAC, and further denies it made any statement referred ti the  
18 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
19 of this paragraph.

20 120. Denied.

21 121. Defendant Pegatron USA denies that it made any of the advertising statements at  
22 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
23 owned any website referred to in the FAC, and further denies it made any statement referred to in the  
24 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
25 of this paragraph.

26 122. Defendant Pegatron USA denies that it made any of the advertising statements at  
27 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
28 owned any website referred to in the FAC, and further denies it made any statement referred to in the

1 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
2 of this paragraph.

3 123. Defendant Pegatron USA denies that it made any of the advertising statements at  
4 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
5 owned any website referred to in the FAC, and further denies it made any statement referred to in the  
6 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
7 of this paragraph.

8 124. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
9 about the truth of the allegations in this paragraph and on such basis denies them. Said answering  
10 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are  
11 entitled to any remedy against this answering defendant.

12 **SIXTH CAUSE OF ACTION**  
13 **Unjust Enrichment**  
**(On Behalf of Plaintiff and the Class)**

14 125. Defendant Pegatron USA hereby incorporates by reference its responses to the  
15 allegations in each of the preceding paragraphs as if set out in full herein.

16 126. Denied.

17 127. Denied.

18 128. Denied.

19 129. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief  
20 about the truth of the allegations in this paragraph and on such basis denies them. Said answering  
21 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are  
22 entitled to any remedy against this answering defendant.

23 **AFFIRMATIVE DEFENSES**

24 Pegatron USA hereby asserts the following affirmative defenses to Plaintiff's claims.  
25 Pegatron USA reserves the right to raise other defenses, affirmative or otherwise, that may become  
26 evident during discovery and during any other proceeding in this action. Pegatron USA also  
27 reserves the right to amend and/or delete any affirmative defenses in the event that discovery  
28 indicates it may be appropriate to do so.

1                                   **FIRST AFFIRMATIVE DEFENSE**  
2                                   **(Failure to State a Claim)**

3           130.    As a first affirmative defense, Defendant Pegatron USA alleges that Plaintiff has  
4 failed to state a claim upon which relief can be granted.

5                                   **SECOND AFFIRMATIVE DEFENSE**  
6                                   **(Immunity under Communications Decency Act, 47 U.S. C. § 230)**

7           131.    As a second affirmative defense, Defendant Pegatron USA alleges that it did not  
8 create or develop any of the advertising statements on which the claims in this action are based, and  
9 to the extent that any such statement is linked to or otherwise accessed by or through any website of  
10 Pegatron USA, assuming there is any such website, Pegatron USA is immune from liability and/or  
11 no claim can be brought against Pegatron USA based on such statement under the Communications  
12 Decency Act, 47 U.S. C. § 230.

13                                   **THIRD AFFIRMATIVE DEFENSE**  
14                                   **(Failure to Mitigate Alleged Damages)**

15           132.    As a third affirmative defense, Defendant Pegatron USA alleges that Plaintiff has not  
16 mitigated its damages, if any.

17                                   **FOURTH AFFIRMATIVE DEFENSE**  
18                                   **(Unconstitutionality)**

19           133.    As a fourth affirmative defense, Defendant Pegatron USA alleges that the claims, to  
20 the extent that they seek exemplary or punitive damages, violate Defendant's rights to procedural  
21 due process under the Fourteenth Amendment of the United States Constitution and, therefore, fail to  
22 state a cause of action upon which punitive or exemplary damages can be awarded.

23                                   **FIFTH AFFIRMATIVE DEFENSE**  
24                                   **(Reservation of Rights)**

25           134.    As a fifth affirmative defense, Defendant Pegatron USA alleges that discovery has  
26 not yet begun, and on the basis of such discovery, other affirmative defenses may become known or  
27 substantiated. Defendant reserves the right to add affirmative defenses within a reasonable time  
28 after the facts of said affirmative defenses may become known to Defendant.

1                                    **SIXTH AFFIRMATIVE DEFENSE**  
2                                    **(Lack of Adequate Representation)**

3            135.    As a sixth affirmative defense, Defendant Pegatron USA alleges the named Plaintiffs  
4 lack standing as representatives of the proposed class and do not adequately represent the putative  
5 class members.

6                                    **SEVENTH AFFIRMATIVE DEFENSE**  
7                                    **(Fails to Meet Rule 23)**

8            136.    As a seventh affirmative defense, Defendant Pegatron USA alleges that this action  
9 does not meet the requirements for class action treatment under Rule 23 of the Federal Rules of Civil  
10 Procedure, or any other applicable law, including, but not limited to, failing to satisfy the  
11 requirements of numerosity, commonality and predominance, typicality, and superiority. Plaintiffs  
12 cannot prosecute this action on behalf of the putative class they purport to represent.

13                                    **EIGHTH AFFIRMATIVE DEFENSE**  
14                                    **(Defense of Other Defendants)**

15            137.    As an eighth affirmative defense, Defendant Pegatron USA incorporates and adopts  
16 each and every applicable defense asserted by any other defendant in this action.

17            WHEREFORE, Defendant Pegatron USA, Inc. prays as follows:

18            1.        The Plaintiff take nothing by reason of its complaint and that judgment be entered in  
19 favor of Defendants.

20            2.        That Defendant Pegatron USA, Inc. be awarded its costs of suit incurred in defense of  
21 this action; and,

22            3.        For such other and further relief as the Court deems proper.

23            Dated: September 22, 2014

Respectfully submitted,

24                                    **BAKER & McKENZIE LLP**

25                                    By: /s/ Tod L. Gamlen

26                                    Tod L. Gamlen  
27                                    Attorneys for Defendant  
28                                    PEGATRON USA, INC.